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THE REPUBLIC OF UGANDA

Inspectorate of Government
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28th April 2013

The Minister of Finance, Planning &
Economic Development
Treasury Building
KAMPALA

**REPORT ON INVESTIGATIONS INTO ALLEGED CORRUPTION AND
MISMANAGEMENT OF THE NATIONAL SOCIAL SECURITY FUND
(NSSF) BY THE TOP MANAGERS AND THE CHAIRMAN OF THE
BOARD OF DIRECTORS**

The Inspectorate of Government received a complaint from "*concerned citizens*" alleging massive corruption and abuse of office at the National Social Security Fund (NSSF) by Mr. Richard Byarugaba, the Managing Director (MD), Ms. Geraldine Ssali Busuulwa, the Deputy Managing Director (DMD), Mr. David Nambale, the Corporation Secretary (CS), and Mr. Ivan Kyayonka, the Chairman of the Board of Directors (C/M BoD).

It was specifically alleged that:

- (i) NSSF incurred an irregular and nugatory expense of UGX. 11M/= on the telephone bill of the C/S when he attended a course in the United Kingdom for two weeks;
- (ii) NSSF spent money on a one week workshop in Dubai for the DMD but she attended for only two days;
- (iii) The DMD and C/S varied their emoluments without approval of the Board and the appointing authority;
- (iv) The C/S was illegally holding the land title for National Farmers' Federation (UNFFE) while encouraging the Federation to sue NSSF for damages which he would share with UNFFE;

- (v) There is a scheme to siphon NSSF funds through a company known as New Forest Company which is being fronted by a renowned senior journalist in Kampala;
- (vi) In disregard of professional advice, NSSF made a fraudulent disposal of land at Namirembe Road, leading to a loss of UGX.100M/=;
- (vii) Due to personal interests the DMD made an illegal award of a tender for supply and installation of air conditioning systems to NSSF;
- (viii) NSSF defied the former Board Chairman and renegotiated a Joint Venture Agreement with SBI and even waived a US\$ 1M loan to M/S SBI. That the C/S received a bribe of USD\$ 300,000 in the deal;
- (ix) The C/S disposed of part of NSSF land at Lubowa without the approval of the Board of Directors and he received bribes from beneficiaries of the illegal transactions;
- (x) NSSF made a decision to invest in shares disposed of in the UMEME Initial Public Offering (IPO) without approval of the full Board, and without obtaining advice from the Attorney General contrary to Article 119(5) of the Constitution of the Republic of Uganda. That the transaction was intended to enable UMEME to raise funds to settle her indebtedness to Shell (U) Ltd where the C/M BoD of NSSF was the Country Manager;
- (xi) The Chairman of the Board of Directors hand-picked his friends, Engineer Anania Mbabazi and Keith Kalyegira, and in conflict of interest appointed them as advisors to the NSSF Board of Directors.

The Inspectorate of Government therefore decided to investigate the allegations and it was established that:

- (i) Mr. David Nambale the C/S was entitled to an official telephone line with blackberry services. However, it was irrational for the managers of the Fund to have no limit for the amount of money allocated to such telephone line(s) so as to guard against irresponsible and inconsiderate use of the facility.
- (ii) Even in the absence of a set limit, it was evident that Mr. Nambale did not live up to the spirit of the NSSF Staff Handbook on reasonable use of the telephone facility. He incurred a bill of 8,195,135/= (exclusive of tax) on account of telephone charges for one month.
- (iii) Ms Geraldine Busuulwa Ssali attended the Balanced Score Card Forum held at the Dubai Marina on the 20th and 21st March 2013. She was for strategic reasons instructed to attend the forum by the MD instead of Ms Joyce Kasirye. Although 5 days were paid for by NSSF she attended for only two days. She however had no control over the amount that was paid for the training because the decision to pay was made when it was anticipated that Ms Kasirye would attend instead of the MD, Mr Richard Byarugaba. At the time the decision to pay was made Ms Busuulwa was on maternity leave.
- (iv) Ms Busuulwa ensured that she was paid living expenses for only three days (including one day for travel) at the rate of US\$570 and not for five days that she was supposed to attend. She could not attend the training for the five days paid for because of her participation in preparations for the first Annual Members Meeting (AMM) of NSSF.
- (v) The planning of the two events, the AMM and the Balanced Scorecard Summit, were not coordinated well by management which resulted into loss by the Fund of US\$ 2,036. The decision by the MD to substitute Ms. Joyce Kasirye with the Ms. Geraldine

Ssali Busuulwa disadvantaged the Fund because the DMD did not complete the training due to other engagements.

- (vi) The allegations that the DMD and C/S connived with the Minister of State for Finance (Privatisation) to increase their emoluments, and the payment of the increased emoluments were not supported by any evidence and were baseless. Instead it was the board of directors that purported to give the NSSF managers complained about a bonus but this was not supported by the provisions of the NSSF Staff Handbook or any law.
- (vii) The delay to release the UNFFE land title is a result of the protracted negotiations that followed the decision to dissolve the JVA between UNFFE and NSSF to develop UNFFE land, which seem to be about the costs to be incurred by NSSF on dissolution of the agreement.
- (viii) Although there seems to be a disagreement about the claims due to UNFFE following the termination of the BOOT agreement and UNFFE has through its lawyers requested NSSF to release the certificate of title, there is no indication that UNFFE intends to sue NSSF for the costs incurred due to the BOOT agreement falling through.
- (ix) The allegations that Mr. David Nambale, the Corporation Secretary, is illegally holding the UNFFE land title with intentions of extorting money from the Fund through UNFFE filing a civil suit against NSSF for large amounts of money were not substantiated.
- (x) The New Forest Company Uganda Ltd (NFCU) proposal to NSSF managers to invest in that company complied with the requirements of the NSSF Investment Policy. The managers initiated a due diligence exercise as required by the Policy but the arrangement was frustrated by an absence of local competencies to carry out due diligence on companies such as NFCU.

- (xi) In the absence of a response to calls for a firm to carry out due diligence, NSSF management put the project with NFCU on hold.
- (xii) No evidence was found to support the allegation that the managers of NSSF responded to the proposal to invest in NFCU for their personal benefit. The connection to the Ugandan journalist named in the complaint was also not established.
- (xiii) The process of disposal of the land known as Block 4 Plot 434, Namirembe was mismanaged by managers of NSSF and influenced by seemingly predetermined interests – the need by Malibu Holdings Ltd to purchase land next to their other pieces of land.
- (xiv) The disposal process was commenced before the Board authorized disposal. Mr. Richard Byarugaba, the Managing Director, illegally sought for a waiver from PPDA to dispose of the land through direct negotiations without a request for use of the method by the Contracts Committee. By so doing, he usurped the powers of the Contracts Committee.
- (xv) The land was sold at UGX 650,000,000/=-, the same value at which it was purchased in 2008. This was reportedly because it was surrounded by land owned by the eventual buyer, Malibu Holdings Ltd, and therefore it could not attract other bidders. This turned out to be untrue because the land had access to a road for 40 years before the sale which amounted to an easement on Malibu Holding's land.
- (xvi) The managers of NSSF did not make sufficient efforts to establish whether or not the land had access to a private or public road. Efforts by the Board of Directors to stay the sale pending resolution of the issue of access were passed over by the Accounting Officer, Mr Richard Byarugaba, who hurriedly made an offer to Malibu Holdings Ltd. for sale of the land.

- (xvii) Though it was clear that the sale of the land on the ground that it lacked access to a public or private road had the effect of reducing its value and limiting the options available to NSSF managers to dispose of it, it was not possible to establish how much was lost due to the compromised sale. The allegation that UGX 100 million was lost was not supported by the evidence of valuations carried out prior to the sale and could not be sustained.
- (xviii) The total breakdown of the Air Conditioners in Workers House in 2011 as a result of the damage to the standby generator due to bad power was not one that could have been anticipated and planned for by the managers of NSSF. It constituted a health hazard and an emergency situation that had to be immediately rectified to enable the Fund to continue rendering services.
- (xix) Unfortunately, when the air conditioners for the server room were replaced as a matter of urgency, the Procurement and Disposal Unit (PDU) did not anticipate that the air conditioners for the Benefits Section, which solely relies on air-conditioners for ventilation (which air conditioners were very old), would also totally breakdown and defy all efforts to repair them, thus causing a health hazard to members of staff of the fund.
- (xx) The Head PDU was unable to take the advice given by the Corporation Secretary when he proposed that an innovative approach be taken in order to satisfy the needs of affected employees in order to meet the constitutional obligations of the employer to provide employees with a safe and healthy environment within which to work. Instead of cooperating with the C/S and finding out whether there was a possibility of acquiring the air conditioners faster, he pressed on with the lengthy process that he had started contrary to the request of the user department (by the DMD) that procedures that lend themselves to urgency be employed.

- (xxi) Although the DMD circumvented the plans of the PDU to complete the procurement on the 24th April 2012 by ordering that documents be prepared for her to award the contract to IBIS Breeze on 20th April 2012, she did not go against the decision of the Contracts Committee to award the contract to the best evaluated firm (IBIS Breeze Ltd); neither did her decision affect the price of the contract. The allegations that she awarded the contract for her personal interest were therefore not sustained.
- (xxii) The loan of US \$ 1 Million was given by Premier Developers Ltd ("PDL", a subsidiary company owned by NSSF) to Victoria Property Developers Ltd (VPDL) a joint venture company partly owned by NSSF, not SolelBoneh International (SBI) as alleged. The money was spent by the Joint Venture Company to prepare a master plan for the Lubowa Housing Project. The master plan was prepared and submitted to Wakiso District Local Government for approval.
- (xxiii) The allegation that the loan was given to SBI was therefore false. Furthermore there was no evidence to show that writing off of the loan was illegal because it was authorized by the Board of Directors of NSSF. The BOD deemed it a sunk cost only recoverable by suing themselves as they had 50% equity in VPDL.
- (xxiv) Although the loan was written off, it did not mean that it could not be recovered. NSSF still intended to recover the loan but the odds were against it. NSSF is a shareholder and part owner of VPDL from which the loan could have been recovered. In effect if NSSF pursued the recovery it would have to recover against itself since VPDL had no property.
- (xxv) No evidence was found to prove the allegation that the Corporation Secretary benefited from the NSSF Board's decision to write off the loan of USD 1,000,000. The allegations in this regard were therefore not sustained.

- (xxvi) Apart from the cases of encroachment, there was no evidence to show that land owned by NSSF in Lubowa was illegally disposed of by the Corporation Secretary or any other person. There was also no evidence to show that the Corporation Secretary facilitated encroachers to gain access to the land as alleged by the complainants. The allegations were therefore baseless and could not be sustained.
- (xxvii) NSSF Investment Policy of 2011 allows participation in IPOs as a permissible investment, within specified limits which were not exceeded in this case. The decision to invest in the UMEME IPO though taken without the requisite advice from the Attorney General contrary to the provisions of Article 119 (5) of the Constitution paid off for the fund and its beneficiaries. It can therefore be inferred that on the whole the decision by NSSF management and the Board to invest in the UMEME IPO was in the interest of NSSF.
- (xxviii) The decision by NSSF managers and the Board to invest in UMEME was made in consultation with stakeholders. Notwithstanding that the investment was made contrary to Article 119(5) of the Constitution, it generated revenue for the fund to the tune of UGX 1.9 billion in dividends. The UMEME market share value on Uganda Securities Exchange also appreciated from the initial price giving NSSF potential for Capital Gains in case of sale of shares. The allegations of conflict of interest on the part of the Chairman of the Board and bribery of the managers of NSSF were not sustained.
- (xxix) Although Engineer Anania Mbabazi and Mr Keith Kalyegira (advisors co-opted on the Board of NSSF) were known to the Chairman of the Board, he disclosed his past relationship with them to other members of the Board during consideration of their appointment and they approved them as advisors that notwithstanding; the allegation that they were appointed by the board and chairman in a situation where he was in conflict of interest was therefore not proved.

- (xxx) It was also not proved that the advisors to the Board earn a lot of worker's money for no work done. They are paid at the same rates as other Board Members and have definite terms and conditions of service stated in appointment letters.

In view of the foregoing it is hereby recommended as follows:

- i) Mr. David Nambale, former Corporation Secretary, should refund the sum of UGX UGX.1,570,623/= which he spent on personal telephone calls to his spouse while he was attending a training course in the United Kingdom. The said amount should be deposited in the **Inspectorate of Government Asset Recovery Account** in the Bank of Uganda.
- ii) The management of NSSF should explore methods of reducing the expenses incurred on roaming charges when blackberry services are used by the managers as soon as possible to prevent accumulating heavy bills for the Fund.
- iii) Telephone usage limits should be set for the top managers of NSSF, including for the use of the mobile blackberry services, as soon as possible.
- iv) The managers of NSSF should plan activities in such a manner as not to cause unnecessary losses to the Fund due to poor planning and uncoordinated execution of activities as was the case when the DMD attended a training program in Dubai in March 2013.
- v) The former MD of NSSF, Mr Richard Byarugaba, should be sternly reprimanded for making the decision to replace Ms Kasirye with Ms Ssali to attend the training in Dubai at short notice and without preventing a nugatory expense from being incurred by the Fund as a result of his decision.
- vi) The monetary awards to Mr. Richard Byarugaba, Mr. David Nambale and Ms. Geraldine Ssali Busuulwa ordered by the NSSF Board of Directors should not be paid to them unless they are

based on the provisions of the NSSF Staff Handbook or law. The decision to pay an award to Ms Muteesi was *ultra vires* the powers of the Board of Directors; it should not be honoured unless it is justified by law.

- vii) National Social Security Fund should release the UNFFE certificate of title in respect of Plot 27 Nakasero Road and meet the relevant statutory disbursement required of the Fund during the time that it held the title as registered proprietor. This should be done without further delay to enable UNFFE transact its planned activities and prevent NSSF from incurring further costs relating to the outgoings on holding the property as registered proprietor.
- viii) The claims made by UNFFE as costs incidental to or a result of the preparation of the BOOT agreement to construct Farmers House should then be determined according to the terms of the BOOT agreement and the matter should be settled amicably between the two parties.
- ix) The Minister of Finance, Planning and Economic Development should enforce appropriate sanctions against the former Managing Director/Accounting Officer of NSSF, Mr. Richard Byarugaba, for neglecting his duty and failing to ensure that the highest value possible is obtained from the sale of the land known as Block 4 Plot 434 at Namirembe.
- x) In future all disposal of land by NSSF should strictly follow the disposal procedures laid out under the Public Procurement and Disposal of Assets Act and Regulations. Sufficient time should also be taken to do proper investigations on assets to be procured or disposed of. The advice given about assets by the legal team should be taken more seriously than it was in the case of disposal of land at Plot 434 at Namirembe.

- xi) In future the management of NSSF must obtain clearance from the Attorney General before entering into transactions such as that in respect of purchase of shares in the UMEME IPO.
- xii) Subject to existing laws relating to Pension Funds and the NSSF in particular, the Attorney General should as a matter of urgency consider and respond to NSSF's request to be exempted from the application of the provisions of Article 119 (5) of the Constitution as is provided for in Article 119 (6), in the process of making quick decisions about investments for the benefit of the Fund.

A copy of the full report on the investigations is sent herewith for your further information and implementation of recommendations.



Irene Mulyagonja Kakooza

INSPECTOR GENERAL OF GOVERNMENT

c.c. The Chairman of the Board of Directors, NSSF

c.c. The Acting Managing Director, NSSF